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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1916.

No. 128

JOHN WILLIAMS, Chief *et al.*,
Appellants,

vs.

CITY OF CHICAGO, ILLINOIS CENTRAL RAILWAY COMPANY *et al.*,
Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois.

Some Suggestions on Behalf of Appellee, City of Chicago.

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CHAMPLIN LAW PRINTING CO.

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The interests of the appellees are in common as against the appellant, Indians. No question of the rights of appellees among themselves is presented. Therefore, the appellee, City of Chicago, adopts as and for its own the very able and exhaustive "brief and argument for Illinois Central R. R. Co., South Park Commissioners, Commissioners of Lincoln Park, Illinois Steel Co., C. C. C. & St. L. Ry. Co., Michigan Central R. R. Co., and M. St. P. & S. Ste.

M. Ry. Co.," for the purposes of this case; it being understood that nothing therein contained or hereinafter set forth shall be considered as applicable to any present or future controversy which the appellee, City of Chicago, may have with the other appellees.

In addition to the matters set forth in the brief above adopted, we desire to call attention to a few things which seem to us to be especially applicable to the case of this appellee.

The general proposition which we desire to emphasize and to which what follows seems to us to be pertinent, is this:

The fact that for practically a century the United States and under it the State of Illinois and its municipalities and private owners have been openly and notoriously asserting sovereignty and ownership and acting with respect to these lands in a manner utterly inconsistent with the construction now sought to be put upon ancient documents and treaties coupled with the further fact that the entire world, including these appellant Indians and their ancestors have acquiesced during all this long time, in such assertions and actions, is the very best evidence that such ancient documents and treaties are not susceptible of the construction now sought to be put upon them.

In 13 Cyc. at pages 608 and 609 it is said:

> "So where all the parties have acted upon a particular construction, such construction should be allowed unless it is forbidden by some positive rule of law."

This appellee, the City of Chicago, is a municipal corporation under the laws of the State of Illinois. For forty years prior to 1863 it had existed as a municipal corporation of one kind or another. In 1837 it was incorporated as a city. It would serve no useful purpose to trace its early history.

In 1863 the State of Illinois, by a statute enacted (see Illinois Laws of 1863) reduced the charter of the city to one law, and by section 2 thereof prescribed its boundaries as follows:

> "The corporate limits and jurisdiction of the City of Chicago shall embrace and include, within the same, all of township thirty-nine north, range fourteen east of the third principal meridian, and all of sections thirty-one, thirty-two, thirty-three and fractional section thirty-four, in township forty, north, range fourteen east of the third principal meridian, *together with so much of the waters and bed of Lake Michigan as lies within one mile of the shore thereof and east of the territory aforesaid.*"

Since that time—and, indeed, for a long time before—the City of Chicago has exercised its jurisdiction as a local government over the territory described in the statute above quoted. This territory includes a large part of the lands claimed by the appellants.

As we will hereinafter more fully point out, the City of Chicago in its private or proprietary capacity also owns certain of these lands. This appears from the bill of complaint.

Thus, more than half a century before the bill of complaint herein was filed, the State of Illinois, by this public statute, openly and notoriously asserted

and exercised ownership and jurisdiction over the lands in question, and neither the appellants nor any predecessor in their supposed title during such half century questioned the title of the State of Illinois.

In 1818 (3 U. S. Statutes at Large, 428)—ninety-six years before the bill of complaint herein was filed—the Congress of the United States adopted an act entitled, "An Act to enable the People of Illinois to form a constitution and state government, and for the admission of such State into the Union on an equal footing with the Original States"; sections 1 and 2 of which act being as follows:

> "§1. BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA, IN CONGRESS ASSEMBLED, That the inhabitants of the territory of Illinois be and they are hereby authorized to form for themselves a Constitution and State government; and to assume such name as they shall deem proper; and the said State, when formed, shall be admitted into the Union upon the same footing with the original States, in all respects whatever.
>
> "§2. AND BE IT FURTHER ENACTED, That the said State shall consist of all the territory included within the following boundaries, to wit: Beginning at the mouth of the Wabash river; thence, up the same, and with the line of Indiana, to the northwest corner of said State; THENCE, EAST WITH THE LINE OF THE SAME STATE, TO THE MIDDLE OF LAKE MICHIGAN; THENCE, NORTH ALONG THE MIDDLE OF SAID LAKE, TO NORTH LATITUDE 42 deg. 30 min.; thence, west to the middle of the Mississippi river; and thence, down along the middle of that river, to its confluence with the Ohio river; and thence, up the latter river, along its northwestern shore, to the beginning: PROVIDED, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and re-

main as now prescribed by the Ordinance for the Government of the territory northwest of the river Ohio: PROVIDED, ALSO, that the said State shall have concurrent jurisdiction with the State of Indiana on the Wabash river, so far as said river shall form a common boundary to both, and also concurrent jurisdiction on the Mississippi river, with any State or States to be formed west thereof, so far as said river shall form a common boundary to both."

1 Jones & Addington's Illinois Statutes Annotated, page 60.

On August 26, 1818, the Constitutional Convention of the State of Illinois accepted the foregoing Enabling Act (Laws 1819, App., p. 21) and on the same day they adopted their first constitution (Laws 1819, App., p. 1), which contains the following:

"The people of the Illinois Territory, having the right of admission into the general government as a member of the Union, consistent with the Constitution of the United States, the Ordinance of Congress of 1787, and the law of Congress approved April 18, 1818, entitled 'An Act to enable the people of the Illinois Territory to form a Constitution and State government, and for the admission of such State into the Union on an equal footing with the original States, and for other purposes;' in order to establish justice, promote the welfare, and secure the blessings of liberty to themselves and their posterity, do, by their Representatives in convention, ordain and establish the following Constitution or form of government, and do mutually agree with each other to form themselves into a free and independent State, by the name of the State of Illinois. And they do hereby ratify the boundaries assigned to such State by the Act of Congress aforesaid, which are as follows, to wit: Beginning at the mouth of the Wabash

river, thence up the same, and with the line of Indiana, to the northwest corner of said State; THENCE EAST WITH THE LINE OF THE SAME STATE, TO THE MIDDLE OF LAKE MICHIGAN; THENCE NORTH, ALONG THE MIDDLE OF SAID LAKE, TO NORTH LATITUDE 42 deg. AND 30 min.; thence west to the middle of the Mississippi river, and thence down, along the middle of that river, to its confluence with the Ohio river; and thence up the latter river, along its northwestern shore, to the beginning."

1 Jones & Addington's Statutes, pages 63, 67.

Thus, at that early date, the Government of the United States understood that it had the right to and did convey to the State of Illinois the west half of Lake Michigan, between the parallels of latitude mentioned, which includes all the lands claimed by the bill of complaint herein.

The acts of the United States and of the State of Illinois, to which we have above called attention, were public acts of the highest solemnity. They could not be attacked, if they were recent; and certainly they are not open to question for the first time almost a century after they occurred.

As appears from paragraph 3 of the bill (transcript, page 2), the appellants assert ownership, possession and occupancy in the Pottawatomie Nation of Indians as a sovereign and independent nation of "all of Lake Michigan which is south of said line," namely, a line running between the mouth of the Milwaukee river and the mouth of the Grand river, so that if appellants were claiming as a nation, their claim is in direct conflict with the above-

mentioned grant of the United States of America to the State of Illinois in 1818, and would also exclude the sovereignty which has for more than a century been exercised over Lake Michigan by the United States.

In this connection the court will take judicial notice of the fact that the government of the United States has appropriated millions of dollars which has been used in improving and protecting the harbor at Chicago. All these works are trespasses by the United States upon the rights of the appellant Indians, if their claims of ownership are well founded.

So, we confidently submit that if the bill of complaint could be treated as filed on behalf of the Pottawatomie NATION of Indians, it could not be sustained. However, it seems not to have been so filed, but rather to have been filed by the appellants claiming, as individuals, the lands referred to in the bill. These lands, it is to be noted, are not specifically described, but relate to all the lands submerged by Lake Michigan, which have been or may hereafter be reclaimed. Some where counsel for appellants refer to islands to which they may be entitled. But their bill is for reclaimed and submerged land; there are no islands involved. We do not think they would be entitled to islands off the shore of Lake Michigan, if there were any. But why speculate as to what their rights in islands might be, when there are none.

How stands the case with appellants claiming as individual owners? They admit that the predeces-

sors in their supposed title have parted with all their right to the shore lands. Hence, they have no claim as riparian owners. If their ancestors at some time were such riparian owners, their rights extended to the shore line and no further. The ownership of riparian owners extends to the thread of the stream in the case of rivers, but only to the shore line in the case of the Great Lakes. The ownership of the submerged lands in Lake Michigan is in the grantee of the United States, the sovereign, namely, the State of Illinois, and neither the appellants, as individuals, nor any predecessor in title of them, as individuals, ever in any view had any right, title or interest in or to such submerged lands.

In the case of *Revell* v. *The People*, 177 Ill. 468, the court, beginning on page 478, said:

> "The law is well settled in the different States that the title to and dominion over lands covered by tide waters within the boundaries of the several states belong to each state wherein the lands are located. The state holds the fee in trust for the public. The doctrine established in regard to lands covered by tide waters has also been held applicable to lands bounded by fresh water in our large lakes. (*People* v. *Kirk*, 162 Ill. 138; *Shively* v. *Bowlby*, 152 U. S. 9.) In the case last cited it is said: 'By the common law both the title and the dominion of the sea, and all rivers and arms of the sea where the tide ebbs and flows and of all the lands below high water mark within the jurisdiction of the crown of England, are in the king. Such waters, and the land which they cover, either at all times or at least when the tide is in, are incapable of ordinary and private occupation, cultivation and improvement, and their natural and primary uses are public in their nature, for highways of navigation and commerce, domestic and foreign,

> and for the purpose of fishing by all the king's subjects. Therefore, the title *jus privatum* in such land, as of waste and unoccupied lands, belongs to the king as the sovereign, and the dominion thereof *jus publicum* is vested in him, as the representative of the nation, for the public benefit.' In *Illinois Central Railroad Co.* v. *Illinois*, 146 U. S. 452, in speaking of this question, the court said: 'That the state holds the title to the lands under the navigable waters of Lake Michigan, within its limits, in the same manner that the State holds title to soils under tide water by the common law, we have already shown, and that title necessarily carries with it control over the waters above them whenever the lands are subject to use. * * * It is a title held in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein freed from the obstruction or interference of private parties.' Indeed, the doctrine that the state holds the title to the lands covered by the waters of Lake Michigan in trust for the people is not controverted in the argument. It will not, therefore, be necessary to cite further authorities upon that question.''

See also:

Bliss v. *Ward*, 198 Ill. 104; and
Cobb v. *Commissioners of Lincoln Park*, 202 Ill. 427.

We do not specifically refer to the decisions of this court on this point because the same are set out in the opinions above referred to.

The foregoing decisions are important, not only on the point on which they are above cited, but further as showing that the ownership of the lands submerged in Lake Michigan to the middle of the lake on the east, within the parallels of latitude here in-

volved, has been uniformly recognized to be in the State of Illinois and its grantees since the Enabling Act of Congress adopted in 1818, and the Ordinance and Constitution of the State of Illinois adopted in the same year.

To sum up, such Enabling Act precludes any ownership by the Pottawatomie Nation of Indians as *a sovereign and independent nation* over Lake Michigan or the lands submerged thereunder; and if the Pottawatomie Indians, as individuals, ever had any private ownership, the same extended only to the shore line of the lake where the ownership of the sovereign began.

As before stated, the appellee, City of Chicago, in addition to its jurisdiction as a governmental agency, has acquired in its private or proprietary capacity certain of the lands in question from the State of Illinois. To show, in part at least, the authority by which the appellee, City of Chicago, has acquired such lands from the State of Illinois, we quote from the statutes of that state, article V, section 1, as follows:

> "The city council in cities, and the president and the board of trustees in villages, shall have the following powers: * * *
>
> "Thirty-second. To erect and keep in repair public landing places, wharves, docks and levees.
>
> "Thirty-third. To regulate and control the use of public and private landing places, wharves, docks and levees.
>
> "Thirty-fourth. To control and regulate the anchorage, moorage and landing of all water craft and their cargoes within the jurisdiction of the corporation.

"Thirty-fifth. To license, regulate and prohibit wharf-boats, tugs and other boats used about the harbor, or within such jurisdiction.

"Thirty-sixth. To fix the rate of wharfage and dockage.

"Thirty-seventh. To collect wharfage and dockage from all boats, rafts or other craft landing at or using any public landing place, wharf, dock or levee within the limits of the corporation.

"Thirty-eighth. To make regulations in regard to use of harbors, towing of vessels, opening and passing of bridges.

"Thirty-ninth. To appoint harbor masters and define their duties."

Hurd's Statutes, 1915-1916, pp. 304 and 306.

Again, section 1 of an Act entitled, "An Act to enlarge the power of cities and villages in relation to harbors," etc., is as follows:

"That every city and village in this State shall have the right, power and authority, and such right, power and authority are hereby granted to acquire, own, construct, maintain and operate anywhere within the jurisdiction or limits of the city or village, or in, over and upon any public waters bordering thereon, harbors, canals, slips, wharves, docks, levees, piers, quay walls, breakwaters and all appropriate harbor structures, facilities, connections and improvements, and in connection therewith to acquire, own, construct, maintain and operate such elevators, vaults and warehouses (including cold storage warehouses), as may be necessary adjuncts or incidental to transportation and railroad terminals, and to acquire, own, construct, maintain and operate all other necessary or appropriate terminal facilities."

Hurd's Statutes 1915-1916, p. 521.

Again, section 11 of an Act entitled, "An Act to authorize cities to acquire, construct, own and to lease or operate public utilities and to provide the means therefor," is as follows:

> "For the purpose of acquiring or constructing wharves, piers, docks, levees, or in connection with such wharves, piers, docks or levees, elevators, warehouses, vaults or necessary and appropriate tracks or terminal facilities, **any city may reclaim the submerged lands under any public waters within the jurisdiction of or bordering upon the city, and shall thereupon be vested with the absolute title, in fee simple, to the lands so reclaimed;** and for any of the purposes aforesaid the city may require, by purchase, condemnation or otherwise, the title of the private or public owners, if any there be, to lands lying beneath such public waters, and also the riparian or other rights, if any there be, of the owners of the shore lands abutting on such public waters in or over such public waters or the submerged lands under such waters. Nothing herein contained, shall give to any city the right to acquire submerged lands as against any park board where any grant has heretofore been made of such submerged lands to any such park board and been acted upon by such board."
>
> Hurd's Statutes 1915-1916, pp. 2049-2051.

Under the authority of the foregoing statutes, and other like statutes, the appellee, City of Chicago, has in its private or proprietary capacity acquired and erected on the lake front property worth millions of dollars. In doing so it has, of course, relied upon the right and power of the State of Illinois, under the above mentioned grant to it from the United States of America, to authorize it to acquire and erect such property. We submit that the

appellee, City of Chicago, had the right to so rely, and that its right and title to such property cannot now be questioned.

In conclusion we call the court's attention to the fact that appellee, City of Chicago, in its governmental capacity is a mere agency or subordinate branch of the government of the State of Illinois.

1 McQuillin Municipal Corporations, Sec. 107, pages 256-258.

In the case of *Mayor* v. *Ray,* 19 Wallace, 468, Mr. Justice Bradley, speaking for the court, said on page 475:

> "A municipal corporation is a subordinate branch of the domestic government of the state. It is instituted for public purposes only; * * * As a local governmental institution, it exists for the benefit of the people within its corporate limits. The legislature invests it with such powers as it deems adequate to the needs to be accomplished."

In *Williams* v. *Eggleston,* 170 U. S. 304, Mr. Justice Brewer, speaking for the court, said on page 310:

> "A municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the state for conducting the affairs of government, and as such it is subject to the control of the legislature."

In 28 Cyc. at page 282 it is said:

> "During the existence of the municipality it is subject to a large measure of legislative control. The sovereign power which has created it, and which may alter or dissolve it at pleasure, may likewise supervise and direct its conduct in all public matters. The state thus acts as general guardian of the person and property of the municipal corporation; and the only limi-

> tation upon its supreme legislative power in this particular will be found in the state or federal constitution. This power of control and supervision is a necessary corollary of the plenary power of the state over all public matters and concerns. It is the sovereign; and wherein not restrained by the supreme law of the land, the legislature, as trustee of the public for the general weal, has power and duty not only to interpose its arm for protection, but to show its might in positive and affirmative acts of government in particular matters over which it had conferred general charter power upon the corporation."

We, therefore, respectfully suggest that the real party in interest with respect to the greater part of the lands, over which this appellee has jurisdiction in its governmental capacity, is the State of Illinois, and that such state, it seems to us, ought to be a party to this proceeding, assuming that a court of chancery has any jurisdiction, which we deny for the reasons stated in the brief which we have adopted.

As we indicated in the beginning, this is intended merely as a supplement to the very able argument filed on behalf of the other appellees which we have adopted on behalf of this appellee.

Respectfully submitted,

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